

**Mohd Hatta bin Sanuri v YAB Perdana Menteri Malaysia
Ketujuh Tun Dr Mahathir Mohamad & Ors**

HIGH COURT (KUALA LUMPUR) — CIVIL CASE
NO WA-21NCvC-128-12 OF 2022
ROZ MAWAR JC
15 DECEMBER 2023

Civil Procedure — Striking out — Action — Whether plaintiff's suit deserved to be struck out for failing to disclose a reasonable cause of action — Whether subject-matter of suit was non-justiciable — Whether plaintiff lacked locus standi — Whether suit was an abuse of court's process

The plaintiff's case was premised on alleged negligence and misfeasance in public office of the first to the fourth defendants for their respective roles in causing the Kuala Lumpur-Singapore High Speed Rail Project ('the project') to be halted/terminated resulting in Malaysia having to pay huge amounts in compensation and costs to the Singapore Government. The plaintiff claimed that the termination of the project was a huge economic loss to Malaysia and had denied the country of an international-class mode of transport. The plaintiff pleaded that: (a) the first defendant was negligent and abused his power while in office when he postponed the project in 2018, resulting in Malaysia having to pay SGD15m (RM46,401,804.21) in abortive costs to Singapore (b) the second defendant was negligent and abused his power while in office when he terminated the project resulting in Malaysia having to pay SGD103m (RM320,270,519.24) to the Singapore Government in compensation; (c) the third and fourth defendants were negligent in failing to safeguard the nation's interests when they managed the project; and (d) the termination of the project was a non-transparent and bad decision which caused Malaysia to pay unnecessary and exorbitant abortive costs and compensation to Singapore, thereby negatively impacting all taxpayers in Malaysia including the plaintiff. The plaintiff sought the following declarations in the instant action: (i) that the project's termination and the payments of compensation and costs to the Singapore Government were null and void; (ii) that the first and second defendants were negligent and committed omissions and the tort of misfeasance in public office for causing the suspension/termination of the project and the paying of the costs and compensation to Singapore; and (iii) the defendants reimburse the fifth defendant for the compensation that was paid to Singapore for terminating the project and also to jointly and severally pay aggravated/exemplary damages of RM1m, and general damages (to be assessed), to each Malaysian, including the plaintiff, for wrongfully and negligently causing the project to be suspended

- A and/or terminated and causing the resultant costs and compensation to be paid to Singapore. Inter alia, the plaintiff sought an order that the project be revived and that the third defendant provide a written account of the total monies that were spent on the project and the basis and formula that was used in the payment of the compensation to the Singapore Government. The defendants applied to strike out the plaintiff's suit on the ground that it did not disclose a reasonable cause of action under O 18 r 19(1)(a) of the Rules of Court 2012.

Held, allowing the application to strike out the plaintiff's suit:

- C (1) The plaintiff's suit had to be struck out on the grounds that the claim disclosed no reasonable cause of action, the subject-matter of the suit was non-justiciable, the plaintiff had no locus standi and the suit was an abuse of the court's process (see para 25).
- D (2) The court had difficulty identifying the causes of action pleaded by the plaintiff. The allegations made were vague, confusing, lacking in specificity and clarity. The claims of negligence and mismanagement were broadly stated without pinpointing the exact legal violations or direct causal links to acts or omissions of the relevant defendants. The pleadings did not conform to O 18 r 7(1) of the Rules of Court 2012. The plaintiff had also pleaded matters with which he was not involved and had no personal knowledge of and many of the allegations were assumptions or even scandalous and embarrassing. The court could not allow its process to be abused in such manner (see paras 10–14).
- F (3) The subject-matter of the plaintiff's claim fundamentally involved the evaluation of decisions and actions taken by the first to the fourth defendants in their executive capacities. These decisions were intrinsically tied to political considerations, resource allocation and policy determinations — all of which were the affairs of the elected branches of the Legislature and the Executive. The first to the fourth defendants were officers democratically elected who had performed their executive roles. Unless and until it could be shown that there was indeed negligence or misfeasance in public office, it was imperative that the courts/Judiciary refrained from engaging in matters that fell squarely within the domain of the Executive and Legislative branches. The decisions regarding the project and its financial management were inherently political and policy-driven and therefore were not issues that were justiciable. Entertaining the suit would set a precedent for judicial interference into areas that were fundamentally policy-driven and politically charged. This would offend the principle of separation of powers. Judicial restraint was necessary to maintain the integrity of the Judiciary and to ensure that it did not overstep its constitutional role (see paras 15 & 18).
- I (4) The plaintiff failed to establish a sufficient legal interest or direct personal injury resulting from the defendants' actions. His capacity to represent

the interests of all Malaysian citizens in a legal capacity was not substantiated by the relevant legal standards. Nothing in the statement of claim showed that the defendants' acts or omissions had either interfered with the plaintiff's private or personal rights or that they had caused him to suffer any special damage (see paras 19–21).

- (5) The plaintiff's suit was not filed in good faith as the motive of the suit was to obtain pecuniary gain. Without disclosing any reasonable cause of action, the filing of the suit was a wastage of public resources including precious judicial time (see paras 22–23).

[Bahasa Malaysia summary]

Kes plaintiff adalah berdasarkan tindakan kecuai dan salah laku dalam jawatan awam defendan pertama hingga keempat kerana tindakan masing-masing yang menyebabkan Projek Kereta Api Berkelajuan Tinggi Kuala Lumpur-Singapura ('projek tersebut') dihentikan/ditamatkan dan menyebabkan Malaysia perlu membayar sejumlah besar pampasan dan kos kepada Kerajaan Singapura. Plaintiff menghujahkan bahawa penamatan projek tersebut merupakan satu kehilangan ekonomi yang besar kepada Malaysia dan telah menafikan mod pengangkutan bertaraf antarabangsa kepada negara ini. Plaintiff memplidkan bahawa: (a) defendan pertama cuai dan menyalahgunakan kuasanya semasa memegang jawatan apabila beliau menangguhkan projek itu pada 2018, menyebabkan Malaysia perlu membayar SGD15 juta (RM46,401,804.21) sebagai kos abortif kepada Singapura; (b) defendan kedua telah cuai dan menyalahgunakan kuasanya semasa memegang jawatan apabila beliau menamatkan projek itu menyebabkan Malaysia perlu membayar SGD103 juta (RM320,270,519.24) kepada Kerajaan Singapura sebagai ganti rugi; (c) defendan ketiga dan keempat cuai kerana gagal menjaga kepentingan negara apabila mereka menguruskan projek tersebut; and (d) penamatan projek tersebut adalah keputusan yang tidak telus dan tidak baik yang menyebabkan Malaysia membayar kos dan pampasan yang tidak perlu dan terlalu tinggi kepada Singapura, sekali gus memberi kesan negatif kepada semua pembayar cukai di Malaysia termasuk plaintiff. Plaintiff memohon deklarasi berikut dalam tindakan ini: (i) bahawa penamatan projek dan pembayaran pampasan dan kos kepada Kerajaan Singapura adalah terbatal dan tidak sah; (ii) bahawa defendan pertama dan kedua cuai dan melakukan pengabaian dan tort salah laku di pejabat awam kerana menyebabkan penggantungan/penamatan projek dan pembayaran kos dan pampasan kepada Singapura; dan (iii) defendan-defendan membayar ganti rugi kepada defendan kelima bagi pampasan yang telah dibayar kepada Singapura untuk menamatkan projek tersebut dan juga secara bersama dan berasingan membayar ganti rugi teruk/teladan sebanyak RM1 juta, dan ganti rugi am (akan dinilai), kepada setiap rakyat Malaysia, termasuk plaintiff, kerana secara salah dan cuai menyebabkan projek itu digantung dan/atau ditamatkan dan menyebabkan kos dan pampasan yang terhasil dibayar kepada Singapura.

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- A Antara lain, plaintif memohon perintah supaya projek itu dihidupkan semula dan defendan ketiga mengemukakan akaun bertulis mengenai jumlah wang yang telah dibelanjakan untuk projek itu dan asas serta formula yang digunakan dalam pembayaran pampasan itu kepada Kerajaan Singapura.
- B Defendan-defendan memohon untuk membatalkan saman plaintif atas alasan ianya tidak mendedahkan kausa tindakan yang munasabah di bawah A 18 k 19(1)(a) Kaedah-Kaedah Mahkamah 2012.

Diputuskan, membenarkan permohonan untuk membatalkan saman plaintif:

- C (1) Saman plaintif harus dibatalkan atas alasan tuntutan itu tidak mendedahkan kausa tindakan yang munasabah, perkara asas di dalam saman itu tidak dijustifikasikan, plaintif tidak mempunyai locus standi dan saman itu merupakan penyalahgunaan proses mahkamah (lihat perenggan 25).
- D (2) Mahkamah mengalami kesukaran untuk mengenal pasti kausa-kausa tindakan yang dihidupkan oleh plaintif. Tuntutan itu samar, mengelirukan, kurang spesifik dan tidak jelas. Tuntutan kecuai dan salah urus dinyatakan secara meluas tanpa menunjukkan pelanggaran undang-undang yang tepat atau hubungan langsung dengan tindakan atau peninggalan defendan-defendan yang berkaitan. Perayu tidak mematuhi A 18 k 7(1) Kaedah-Kaedah Mahkamah 2012. Plaintif juga telah mengakui bahawa dia tidak terlibat dan tidak mempunyai pengetahuan peribadi dan kebanyakan tuduhan itu adalah andaian atau skandal dan memalukan. Mahkamah tidak boleh membenarkan prosesnya disalahgunakan dengan cara sedemikian (lihat perenggan 10–14).
- F (3) Perkara asas tuntutan plaintif melibatkan penilaian keputusan-keputusan dan tindakan-tindakan yang diambil oleh defendan pertama hingga keempat dalam kapasiti eksekutif mereka. Keputusan ini secara amnya terikat dengan pertimbangan politik, peruntukan sumber dan penentuan dasar — semuanya adalah urusan Badan Perundangan dan Eksekutif. Defendan pertama hingga keempat adalah pegawai yang dipilih secara demokratik yang telah melaksanakan peranan eksekutif mereka. Melainkan jika dapat ditunjukkan bahawa memang terdapat kecuai atau salah laku dalam jawatan awam, adalah penting bahawa mahkamah/Kehakiman menahan diri daripada terlibat dalam perkara-perkara yang melibatkan cabang Eksekutif dan Perundangan. Keputusan mengenai projek dan pengurusan kewangannya sememangnya didorong oleh politik dan dasar dan oleh itu ianya bukan isu yang boleh diputuskan. Saman itu akan menetapkan duluan bagi campur tangan kehakiman ke dalam bidang yang pada asasnya didorong oleh dasar dan politik. Hal ini akan menyalahi prinsip pemisahan kuasa. Sekatan kehakiman adalah perlu untuk mengekalkan
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- integriti Badan Kehakiman dan memastikan ianya tidak melampaui peranan perlembagaannya (lihat perenggan 15 & 18). A
- (4) Plaintiff gagal menunjukkan kepentingan undang-undang yang mencukupi atau kerugian peribadi secara langsung akibat tindakan defendan-defendan. Keupayaan dia untuk mewakili kepentingan semua warganegara Malaysia dalam undang-undang tidak dibuktikan oleh tindakan undang-undang yang berkaitan. Tiada mana-mana di dalam pernyataan tuntutan menunjukkan bahawa perbuatan atau peninggalan defendan-defendan telah sama ada mengganggu hak peribadi plaintiff atau menyebabkan dia mengalami sebarang kerugian khas (lihat perenggan 19–21). B C
- (5) Plaintiff gagal menunjukkan kepentingan undang-undang yang mencukupi atau kerugian peribadi secara langsung akibat tindakan defendan-defendan. Keupayaan dia untuk mewakili kepentingan semua warganegara Malaysia dalam undang-undang tidak dibuktikan oleh tindakan undang-undang yang berkaitan. Tiada mana-mana di dalam pernyataan tuntutan menunjukkan bahawa perbuatan atau peninggalan defendan-defendan telah sama ada mengganggu hak peribadi plaintiff atau menyebabkan dia mengalami sebarang kerugian khas (lihat perenggan 19–21).] D E

Cases referred to

- Abdul Rahim bin Aki v Krubong Industrial Park (Melaka) Sdn Bhd & Ors* [1995] 3 MLJ 417; [1995] 4 CLJ 551, CA (refd)
- Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7, SC (refd) F
- Barnes v Handf Acceptance and others* [2004] EWHC 1095 (Ch), Ch D (refd)
- Boo Are Ngor (p) v Chua Mee Liang (p) (sued as public officer of Kim Leng Tze Temple)* [2009] 6 MLJ 145; [2009] 6 CLJ 617, FC (refd)
- Boyce v Paddington Borough Council* [1903] 1 Ch 109, Ch D (refd) G
- Brown and another v AB* [2018] EWHC 623 (QB), QBD (refd)
- Datuk Seri Anwar Ibrahim v Government of Malaysia & Anor* [2020] 4 MLJ 133; [2020] 3 CLJ 593, FC (refd)
- Davy v Garrett* (1878) 7 Ch D 473, Ch D (refd)
- Doherty v Minister for Justice, Equality and Law Reform and others* [2009] IEHC 246, HC (refd) H
- Dr Michael Jeyakumar Devaraj v Peguam Negara Malaysia* [2013] 2 MLJ 321; [2013] 3 AMR 315; [2013] 2 CLJ 1009, FC (refd)
- Duke of Bedford v Ellis and others* [1901] AC 1, HL (refd)
- Dunn v Glass Systems (UK) Ltd* [2007] EWHC 1901 (QB), QBD (refd) I
- Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin* [1998] 1 SLR 374, CA (refd)
- Gasing Heights Sdn Bhd v Aloyah bte Abd Rahman & Ors* [1996] 3 MLJ 259; [1996] 3 CLJ 695, HC (refd)

- A *Government of Malaysia v Lim Kit Siang; United Engineering (M) Berhad v Lim Kit Siang* [1988] 2 MLJ 12, SC (refd)
Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor [2008] 2 MLJ 11; [2008] 1 CLJ 651, CA (refd)
Letitia Bosman v PP and other appeals (No 1) [2020] 5 MLJ 277, FC (refd)
- B *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145; [2014] 2 CLJ 525, FC (refd)
Middy Industries Sdn Bhd & Ors v Arensi-Marley (M) Sdn Bhd [2013] 3 MLJ 511, CA (refd)
- C *Palmco Holding Bhd v Sakapp Commodities (M) Sdn Bhd & Ors* [1988] 2 MLJ 624 (refd)
Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal [2019] 3 MLJ 443, FC (refd)
- D *Ponnusamy and others v Secretary of State for Foreign and Commonwealth Affairs* [2015] EWHC 1760 (QB), QBD (refd)
RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd [2010] 2 MLJ 188; [2010] 1 CLJ 665, FC (refd)
Sim Kie Chon v Superintendent of Pudu Prison & Ors [1985] 2 MLJ 385; [1985] CLJ Rep 293, SC (refd)
- E *Tchenguiz and others v Grant Thornton LLP and others* [2015] EWHC 405 (Comm), QBD (refd)
Tony Pua Kiam Wee v Government of Malaysia and another appeal [2019] 12 MLJ 1, FC (refd)
- F *Trump v Clinton et al* (US District Court No 22-CV-14102) (refd)
Voon Keng & Ors v Syarikat Muzwina Development Sdn Bhd [1990] 3 MLJ 61; [1990] 3 CLJ Rep 329, HC (refd)

Legislation referred to

- G Rules of Court 2012 O 18 rr 7(1), 19(1)(a)
Mohaji Selamat (with Nur Izatul Nabila Nazarudin) (Mohaji Hazury & Ismail) for the plaintiff.
Donald Joseph Franklin (with Razalijaya A Dadi and Erma Wani Md Kassim, Saravanan Kuppusamy, Syafiq Affandy Hassan and Nur Syazwani Abdul Aziz)
- H *(Federal Counsel, Attorney General's Chambers) for the defendants.*

Roz Mawar JC:

INTRODUCTION

- I [1] Before this court is a matter that piques the public's interest and constitutional import. The plaintiff, a citizen, has boldly stepped forward to challenge a decision made by the administration and the government, a decision that allegedly resulted in the expenditure of hundreds of millions of

taxpayers' moneys. This case, at its core, not only questions the stewardship of public funds but also the very pillars of administrative accountability and governmental responsibility.

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[2] The gravity of the allegations cannot be understated. The plaintiff contended that the decision in question was not only imprudent but also lacked the necessary legal and procedural sanctity expected in the administration of public affairs. Such assertions, if proven, strike at the heart of democratic governance and the rule of law. The citizen's action, while arguably noble in its pursuit of governmental accountability, must nonetheless be scrutinised under the unforgiving lens of legal legitimacy. Central to this deliberation is the concept of 'locus standi' — the right or capacity to bring an action or to appear in a court. The principle of locus standi ensures that only those with sufficient interest in a case's outcome are permitted to bring a lawsuit. It is a fundamental doctrine designed to prevent the courts from being flooded with cases brought by individuals or entities with no legal stake in the proceedings.

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[3] In this context, the plaintiff's locus standi becomes a pivotal aspect of our determination. The court is tasked with the intricate balancing act of upholding the principles of justice and the rule of law, while simultaneously safeguarding the democratic process from being undermined by litigations lacking a legitimate legal basis.

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THE PLAINTIFF'S SUIT

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[4] To assess the defendants' application to strike out the plaintiff's claim (encl 14), the court turns to the plaintiff's statement of claim ('SOC') that was authored for 63 pages. He cited negligence and misfeasance in public office on the part of the defendants for the alleged wrongful termination of the Kuala Lumpur-Singapore High Speed Rail Project ('the HSR Project') that resulted in compensation payment to the Government of Singapore. The amount of compensation payment pleaded against each of the defendants differed. The first defendant for nearly RM46m which was the same amount as that pleaded against the third defendant whilst the second defendant for RM320,270,519.24. Both the amounts were pleaded against the fourth defendant.

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[5] The plaintiff claimed that it was an enormous economic loss and the denial of a first-class international level transportation that was expedient, safe, and affordable. His SOC iterated the chronology of the birth of the idea of the HSR Project until para 41 at p 22 where it was pleaded that the first defendant upon winning the 14th General Election on 9 May 2018 had proposed on 28 May 2018 to terminate the HSR Project to reduce the nation's debts. It was

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- A** made known that the reason was that the HSR Project would incur enormous costs where the Malaysian public would not reap the benefits as reported.
- B** [6] The plaintiff core allegation is that inappropriate, arbitrary termination of the HSR Project based on defendants' personal interests rather than national interest unnecessarily resulted in major compensation costs paid by the Malaysian government and people. His SOC stated that the alleged mismanagement and the unnecessary compensation costs payments occurred as:
- C** (a) the first defendant was negligent and abused his power when he postponed the HSR Project in 2018, resulting in Malaysia having to pay SGD15m (RM46,401,804.21) in abortive costs to Singapore;
- D** (b) the second defendant was negligent and abused his power when he refused to maintain the AssetsCo company in the HSR Project agreement with the Singaporean counterpart, which led to its termination in 2020. This resulted in Malaysia paying SGD103m (RM320,270,519.24) in compensation fees to Singapore;
- E** (c) the plaintiff alleged the second defendant terminated the HSR Project just to replace it with a new KL-JB High Speed Rail Project that would benefit his personal or his political party's interests, at the expense of Malaysian taxpayers;
- F** (d) the third and fourth defendants were negligent in safeguarding the country's interests when they managed the HSR Project.
- (e) there were no reasonable grounds provided by the defendants to justify terminating an otherwise beneficial project for Malaysia. The plaintiff alleged that it was a non-transparent, bad faith decision; and
- G** (f) the compensation and abortive costs were unnecessarily paid out from public funds due to the defendants' actions, negatively impacting all taxpayers including the plaintiff.
- H** [7] The plaintiff sought the following declarations from this court:
- (a) that the termination of the HSR Project announced by the second defendant was null and void;
- I** (b) that the payment of compensation RM46m to Singapore on 31 January 2019 as suspension costs was null and void;
- (c) that the first defendant and other defendants were negligent and committed omissions and tort of misfeasance in public office whilst serving as the Seventh Prime Minister of Malaysia and the ministry when the compensation payment of RM46m was paid to Singapore;

- (d) that the second defendant and other defendants were negligent and committed omissions and tort of misfeasance in public office whilst serving as the Eighth Prime Minister of Malaysia and the ministry when the payment was made from the Malaysian taxpayers' moneys in the sum of RM320,270,319.24 was paid to Singapore for the termination of the HSR Project without getting any profit and facilities through the HSR Project; A
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- (e) that the defendants had committed negligence and omission, misrepresentation, betrayal and breach of trust towards all Malaysians including the plaintiff when the defendants suspended and then terminated the HSR Project which could have stimulated the economy of Malaysia with the creation of an estimation of 111,000 job opportunities by 2060; C
- (f) that the defendants pay back RM46m to the fifth defendant for the wrongful compensation which was paid to Singapore as suspension cost or order restitution of the same; D
- (g) that the defendants pay back RM320,270,519.24 to the fifth defendant for the wrongful compensation that resulted from the wrongful and negligent actions of the defendant in the termination of the HSR Project; E
- (h) that the defendants jointly and severally pay damages and compensation amounting to RM1m to each Malaysian including the plaintiff for wrongfully and negligently suspending the HSR Project and wasting Malaysians' money in paying the compensation costs of RM320,270,519.24 for the termination of the HSR Project that they decided negligently; and F
- (i) that the defendants jointly and severally pay damages and compensation amounting to RM1m to each Malaysian including the plaintiff for wrongfully and negligently terminating the HSR Project and wasting Malaysian's money in paying the compensation cost of RM320,270,519.24 that they had decided negligently. G
- [8] The plaintiff sought the following orders from this court: H
 - (a) that the defendants resume the HSR Project taking into account the interest of Malaysians including the plaintiff who would benefit from the transportation facilities at an international level and to generate the national economy in the future; I
 - (b) that the defendants disclose the memorandum of understanding signed by Malaysia and Singapore on 19 July 2016 for the HSR Project;
 - (c) that the defendants pay damages to all Malaysians including the plaintiff for the tort of misfeasance in public office, negligence and omission,

- A misrepresentation, betrayal and breach of trust against all the Malaysians including the plaintiff to be assessed by this court;
- (d) that the defendants pay aggravated and exemplary damages to all Malaysians including the plaintiff in the sum of RM100,000 per person or any other amount to be assessed by the court;
- B (e) that the defendants provide a written explanation as to why the defendants made the decision to suspend the HSR Project on 21 May 2019 and subsequently terminate the HSR Project officially on 31 December 2020;
- C (f) that the third defendant provide a written explanation on the amount spent by the second defendant throughout the HSR Project from 2018 to 2021 specifically involving payments (including the compensation for the HSR contract termination if any) to the companies that were officially appointed to carry out works related to the HSR Project;
- D (g) that the third defendant provide a written explanation of the basis and formula used to pay Singapore the amount of RM320,270,519.24 as a result of the wrongful termination of the HSR Project and suspension costs of up to RM46m; and
- E (h) that the defendants pay costs of this action to the plaintiff on a client-solicitor basis.

THE BASIS OF THE DEFENDANTS' APPLICATION TO STRIKE OUT THE PLAINTIFF'S SUIT

- F [9] The learned senior federal counsel ('SFC') professed that his team took a whole day to digest the SOC. The forefront basis of their application to strike out falls under limb (a) of O 18 r 19(1) of the Rules of Court 2012 ('the ROC').
- G In submitting that there was no clear of reasonable cause of action disclosed in the plaintiff's SOC, the learned SFC referred to the Federal Court case of *Tony Pua Kiam Wee v Government of Malaysia and another appeal* [2019] 12 MLJ 1 to map out their arguments, specifically paras 38–41 of the judgment:
- H The essence of a striking out application particularly under limb (a) of O 18 r 19 is that upon an examination of the claim, a whole and coherent cause of action must subsist. A whole and coherent cause of action cannot subsist until and unless all the essential ingredients comprising that cause of action subsist or are made out in the body of the statement of claim, that in turn means that *it is incumbent upon a court undertaking a striking out exercise to scrutinise a claim purposively such that it is satisfied that prima facie, the statement of claim contains a sufficient factual matrix to support each and every ingredient of the cause of action pleaded.* On the meaning of a reasonable cause of action, see *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11; [2008] 1 CLJ 651 where His Lordship Low Hop Bing JCA Stated at para 29: 'A reasonable
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- cause of action means simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person'. A
- It may well be the case that a claim is pleaded in such a manner that the factual matrix is scandalous or so frivolous or vexatious that it can give rise to no other inference that that it is wholly indefensible or unsustainable. This would be plainly discernible on the face of a claim. Such pleas or averments would fall for striking out under one of the other limbs of O18 r 19 and/or the inherent jurisdiction of the court. B
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- ... *Recourse ought not to be had to the oversimplified catchphrase of 'let the matter go to trial' in place of undertaking the task of identifying the elements and ascertaining whether the plea meets and supports, by way of a salient factual matrix, each of those elements.* To do otherwise would be to misconstrue and misapply the classic and timeless test of only striking out a claim which is 'obviously unsustainable' as enunciated in the *Bandar Builder's* case. (Emphasis by the defendants.) C
- NO CLEAR REASONABLE CAUSE OF ACTION DISCLOSED IN THE SOC D
- [10] The plaintiff's SOC was scrutinised, no less than thrice. This court found difficulty identifying the causes of action pleaded. Undoubtedly there were vagueness of allegations brought forth by the plaintiff. Though serious in nature, the SOC lacked the specificity and clarity required for a judicial inquiry. The claims of negligence and mismanagement were broadly stated without pinpointing the exact legal violations or direct causal links to the defendants' actions or omissions (the Federal Court's decision in *RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd* [2010] 2 MLJ 188; [2010] 1 CLJ 665 referred). E
- [11] This court agrees with the contention of the defendants where the learned SFC painstakingly showed this court that the form and contents of the SOC were not in accordance with O 18 r 7(1) of the ROC. It was prolix, confusing in a way that the lengthy statements were needed to be sifted to understand which angle the plaintiff took to launch this action. It contained a scatter of evidence yet there was no identification of the elements that make the cause of action. F
- [12] There were also complaints of events which the plaintiff was not involved in or had personal knowledge; some accusations in the SOC appeared to be accusations on behalf of others who are not even parties to the proceedings, which were repeated — see paras 66–68, 74–75, 81 and 83 of the SOC. Several paragraphs were assumptions and some others bordered scandalous, to say the least — see paras 67–68, 71–72, 81, 83, 85–86 of the SOC. G
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A [13] The 109 paragraphs (the sub-paragraphs not included) were convoluted. This court finds that evidence and lengthy quotes were lifted from documents and Hansard — as demonstrated in paras 46–48, 51, 55, 61, 73, 79–80, 82, 84 and 105–106 of the SOC. Though lengthy, there were no disclosure on the particular cause of action or its elements. Neither was it pleaded the facts that were to support the elements of each cause of action. Specifically, paras 34, 50, 52–54 and 56 of the SOC but the overall SOC too.

C [14] Paragraphs 85(a)–(h) of the SOC demonstrated the plaintiff's grievances and wide-ranging accusations and disconnected complaints which this court not only finds difficult to understand the plaintiff's cause of action but also embarrassing. This court will not allow its process to be abused — it is not a forum to air political manifestos. Order 18 r 7(1) of the ROC were not complied with. See also *Davy v Garrett* (1878) 7 Ch D 473, *Dunn v Glass Systems (UK) Ltd* [2007] EWHC 1901 (QB), *Brown and another v AB* [2018] EWHC 623 (QB), *Barnes v Handf Acceptance and others* [2004] EWHC 1095 (Ch), *Doherty v Minister for Justice, Equality and Law Reform and others* [2009] IEHC 246, *Tchenguz and others v Grant Thornton LLP and others* [2015] EWHC 405 (Comm), *Ponnusamy and others v Secretary of State for Foreign and Commonwealth Affairs* [2015] EWHC 1760 (QB), *Trump v Clinton et al* (US District Court No 22-CV-14102).

THE SUBJECT MATTER IN THE PLAINTIFF'S SOC IS NON-JUSTICIABLE

F [15] The subject matter of the plaintiff's claim fundamentally involved the evaluation of decisions and actions taken by the defendants in their executive capacity. These decisions are intrinsically tied to political considerations, resource allocation, and policy determinations — all of which are the affairs of the elected branches of the legislature and the executive which is the fifth defendant. The first to the fourth defendants were officers democratically elected who had performed the executive roles. Unless and until there are causes of actions that show there were indeed negligence or misfeasance of the public office, it is imperative that the courts/judiciary refrains from engaging in matters that fall squarely within the domain of the executive and legislative branches. The decisions made regarding the HSR Project and related financial management were inherently political and policy-driven, which are not justiciable issues. Entertaining this suit would set a precedent for judicial overreach into policy decisions, which is contrary to the separation of powers' principle.

I [16] The business of the Judiciary, specifically this court is to administer justice. Rights and liabilities are to be determined in the cases filed according to the law. The plaintiff's claim which are absent of facts and elements of

negligence and the tort of misfeasance of public office in the SOC, involved policy decisions that surpass the institutional competence of this court. While there may be disagreements over the efficacy of the decisions made, these do not inherently constitute misfeasance. For the record, it is noted that the plaintiff's claim of misfeasance in public office requires a high threshold of proof, including evidence of targeted malice or recklessness. In any event, the subject matter is non-justiciable.

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[17] This court agrees with the defendants' submissions that the nature, composition and process of the court and government are inherently suited to its own respective spheres, and inherently unsuited to perform the functions of the other. The distinction between the roles of the court and government is at the heart of the constitutional balance. Refer to John Laws, *The Constitutional Balance* (2021) Oxford: Hart Publishing at 38–43, *Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443, *Dr Michael Jeyakumar Devaraj v Peguam Negara Malaysia* [2013] 2 MLJ 321; [2013] 3 AMR 315; [2013] 2 CLJ 1009, *Letitia Bosman v Public Prosecutor and other appeals (No 1)* [2020] 5 MLJ 277.

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[18] Engaging with the subject matter of the plaintiff's claim would set a precedent for the judiciary to interfere in areas that are fundamentally policy-driven and politically charged. This would lead to judicial overreach, where courts take on roles that are not within their traditional purview, potentially undermining the balance of powers within the government. This court considered existing precedents where similar claims have been deemed non-justiciable. Judicial restraint is necessary to maintain the integrity of the judiciary and to ensure that it does not overstep its constitutional role.

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THE PLAINTIFF HAS NO LOCUS STANDI

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[19] The plaintiff, while demonstrating a commendable level of civic engagement, has failed to establish a sufficient legal interest or direct personal injury resulting from the defendants' actions. The concept of 'locus standi' is pivotal in our legal system to ensure that only those directly affected by a matter have the standing to bring a suit. In this case, the plaintiff's capacity to represent the interests of all Malaysian citizens in a legal capacity is not substantiated by the relevant legal standards. The Supreme Court in *Government of Malaysia v Lim Kit Siang; United Engineering (M) Berhad v Lim Kit Siang* [1988] 2 MLJ 12 adopted the definition of locus standi as held in *Boyce v Paddington Borough Council* [1903] 1 Ch 109:

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A plaintiff can sue without joining the Attorney-General in two cases: first, where the interference with the public right is such that some private right of his is at the same time interfered with (eg Where an obstruction is so placed in a highway is

- A specially affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway); and, secondly, where no private right is interfered with but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right.
- B [20] Nothing in the SOC show that the plaintiff's private or personal rights were interfered with by the defendants, or in the event of an interference with a right that is common to all members of the public, if he suffers special damage peculiar to himself. Refer to *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145; [2014] 2 CLJ 525 and
- C *Datuk Seri Anwar Ibrahim v Government of Malaysia & Anor* [2020] 4 MLJ 133; [2020] 3 CLJ 593.
- D [21] Moreover, it is observed that the plaintiff who claimed to represent the Malaysian public had failed to disclose in his SOC that he was indeed authorised or appointed to represent each Malaysian taxpayer or citizen. See *Duke of Bedford v Ellis and others* [1901] AC 1; *Palmco Holding Bhd v Sakapp Commodities (M) Sdn Bhd & Ors* [1988] 2 MLJ 624; *Voon Keng & Ors v Syarikat Muzwina Development Sdn Bhd* [1990] 3 MLJ 61; [1990] 3 CLJ Rep
- E 329; *Abdul Rahim bin Aki v Krubong Industrial Park (Melaka) Sdn Bhd & Ors* [1995] 3 MLJ 417; [1995] 4 CLJ 551.

ABUSE OF COURT PROCESS

- F [22] In his gallant fashion, the plaintiff claimed that the defendants had wrongfully used moneys of the Malaysian public in the payments for compensation to Singapore for the termination of the HSR Project. Yet, it embarked on this suit that incur public cost whereby precious judicial time and resources had to be spent ploughing through the plaintiff's lengthy and
- G convoluted SOC which did not disclose a reasonable cause of action.
- H [23] The reasonable and logical conclusion was that the suit was not filed by the plaintiff in good faith. The prayers sought for spelled out the motive of the plaintiff's action which was immediate monetary gains. The plaintiff had pecuniary gain as the end goal and that would be from the defendants' coffers (the fifth defendant of which would be from the public funds as well!). This court therefore prevents such venture to abuse the court process. The term confirmed in *Boo Are Ngor (p) v Chua Mee Liang (p) (sued as public officer of Kim Leng Tze Temple)* [2009] 6 MLJ 145; [2009] 6 CLJ 617, *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11; [2008] 1 CLJ 651, and *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin* [1998] 1 SLR 374.
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THIS COURT'S ORDER

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[24] Allowing this suit to proceed without a clear and direct cause of action could open the floodgates to frivolous litigation, potentially inundating the judicial system with cases brought forth by individuals or groups without a direct or substantial interest in the matter.

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[25] For each and every reason assessed above, this court strikes out the plaintiff's claim. There is no need for any more precious judicial time and resources to spend on the plaintiff's claim which disclosed no reasonable cause of action where the subject matter is non-justiciable. Central to this is the fact that the plaintiff has no locus standi. This suit amounted to an abuse of court process.

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[26] This court is of the considered view that costs must be ordered against the plaintiff. The counsel for the plaintiff submitted that the plaintiff had launched other suits and upon unfavourable decisions, costs were not ordered on the basis that they were public interest cases. In this instance however, this court declines to deem this case categorised as public interest. Premised on resources allocated by the defendants, a sum of RM10,000 is reasonable.

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[27] The binding authorities on striking out the plaintiff's suit summarily are *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7, *Sim Kie Chon v Superintendent of Pudu Prison & Ors* [1985] 2 MLJ 385; [1985] CLJ Rep 293, *Middy Industries Sdn Bhd & Ors v Arensi-Marley (M) Sdn Bhd* [2013] 3 MLJ 511 and *Gasing Heights Sdn Bhd v Aloyah bte Abd Rahman & Ors* [1996] 3 MLJ 259; [1996] 3 CLJ 695.

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[28] The plaintiff's suit is struck out. The defendants are awarded costs of RM10,000 to be paid forthwith.

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Application to strike out plaintiff's suit allowed.

Reported by Ashok Kumar

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